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Working paper on the methods of work of the Sub-Commission relating to reports, submitted by Mr. Emmanuel Decaux

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Summary

The Sub-Commission on the Promotion and Protection of Human Rights, in its decision 2004/121, adopted without a vote on 12 August 2004, decided to entrust Mr. Emmanuel Decaux with the preparation of a working paper on the methods of work of the Sub-Commission relating to the choice of subject and the preparation of reports and on how the Sub-Commission should organize its work so as to ensure full consideration of reports by members of the Sub-Commission, non-governmental organizations, national delegations and other interested parties, and requested Mr. Decaux to submit his working paper to the Sub-Commission at its fifty-seventh session. On the same date, the Sub-Commission adopted decision 2004/120, in which it decided, again without a vote, to ask Ms. Françoise Hampson to prepare a working paper on the organization of the work of the Sub-Commission under agenda item 2. The Sub-Commission's intention was to discuss these two working papers under agenda item 1, entitled "Organization of work", thereby launching a forward-looking round of deliberations on the dual nature of its work on the protection and promotion of human rights.

The Commission on Human Rights, in its resolution 2005/53 of 20 April 2005, drew attention to the framework for these deliberations, recalling the report of the intersessional open-ended working group on enhancing the effectiveness of the mechanisms of the Commission on Human Rights (E/CN.4/2000/112), reaffirming Commission decision 2000/109 of 26 April 2000, recalling the rules of procedure of the functional commissions of the Economic and Social Council and other decisions and practices relating thereto, as well as Sub-Commission decision 1999/114 of 26 August 1999 by which the Sub-Commission adopted guidelines for the application of the rules, and bearing in mind the final working paper on the methods of work of the Sub-Commission (E/CN.4/Sub.2/1999/2).

The deliberations undertaken by the Sub-Commission in accordance with the specific guidelines set out by the Commission are part of the Sub-Commission's ongoing review of its functions, methods and results. At the same time, its deliberations cannot ignore the broader context of United Nations reform in the field of human rights, including the proposals for a radical reform of the Commission on Human Rights. The author of this working paper considers it more important at this stage to focus on the guidelines annexed to Sub-Commission decision 1999/114 (E/CN.4/2000/2-E/CN.4/Sub.2/1999/54) following the Sub-Commission's most recent and far-reaching deliberations on its methods of work, to ask questions and to make suggestions with a view to stimulating joint discussion, rather than to seek definitive answers. It will be for the Sub-Commission to decide whether a working group needs to be set up, as has twice been done in the recent past, given the uncertainty raised by the negotiations under way on the eve of the sixtieth anniversary of the United Nations.

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1. The Sub-Commission on the Promotion and Protection of Human Rights, in its decision 2004/121, adopted without a vote on 12 August 2004, decided to entrust Mr. Emmanuel Decaux with the preparation of a working paper on the methods of work of the Sub-Commission relating to the choice of subject and the preparation of reports and on how the Sub-Commission should organize its work so as to ensure full consideration of reports by members of the Sub-Commission, non-governmental organizations, national delegations and other interested parties, and requested Mr. Decaux to submit his working paper to the Sub-Commission at its fifty-seventh session. On the same date, the Sub-Commission adopted decision 2004/120, in which it decided, again without a vote, to ask Ms. Françoise Hampson to prepare a working paper on the organization of the work of the Sub-Commission under agenda item 2. The Sub-Commission's intention was to discuss these two working papers under agenda item 1, entitled "Organization of work", thereby launching a forward-looking round of deliberations on the dual nature of its work on the protection and promotion of human rights.

2. The Commission on Human Rights, in its resolution 2005/53 of 20 April 2005, drew attention to the framework for these deliberations, recalling the report of the intersessional open-ended working group on enhancing the effectiveness of the mechanisms of the Commission on Human Rights (E/CN.4/2000/112), reaffirming Commission decision 2000/109 of 26 April 2000, recalling the rules of procedure of the functional commissions of the Economic and Social Council and other decisions and practices relating thereto, as well as Sub-Commission decision 1999/114 of 26 August 1999 by which the Sub-Commission adopted guidelines for the application of the rules, and bearing in mind the final working paper on the methods of work of the Sub-Commission (E/CN.4/Sub.2/1999/2).

3. In the same resolution, the Commission recognized in particular the important contribution of the Sub-Commission and its thematic mechanisms to the development of a better understanding of human rights through the study of important issues, the elaboration of international human rights standards and the promotion and protection of human rights throughout the world, as well as the valuable contribution that Governments, intergovernmental organizations and non-governmental organizations had made to the success of the Sub-Commission (para. 2). It decided that the Sub-Commission could best assist the Commission by providing it with:

> "(a) Independent expert studies and working papers solely carried out by its members or alternates during their mandate, notwithstanding the completion of currently existing mandates;
>
> (b) Recommendations based on, and after full consideration of, those studies;
>
> (c) Studies, research and expert advice at the request of the Commission, including proposals confirmed by the Commission which had been suggested by treaty bodies or other United Nations human rights bodies" (para. 3).

4. The Commission recommended that the Sub-Commission further improve its methods of work by:

"(a) Focusing on its primary role as an advisory body to the Commission, specifically when its advice is requested by the Commission;

(b) Giving particular attention to the selection of studies specifically recommended by the Commission or proposals confirmed by the Commission which have been suggested by treaty bodies or other United Nations human rights bodies, at the same time focusing on how and when the implementation of existing standards can be improved;

(c) Respecting strictly the highest standards of impartiality and expertise and avoiding acts which would affect confidence in the independence of its members, in particular in situations where they could have a conflict of interest;

(d) Facilitating efficient and effective participation of non-governmental organizations;

(e) Giving full consideration to studies and working papers by special rapporteurs and its members before sending them to the Commission;

…

(g) Making proposals to the Commission on how it might assist the Sub-Commission in improving its work, and vice versa" (para. 10).

5. The deliberations undertaken by the Sub-Commission in accordance with the specific guidelines set out by the Commission are part of the Sub-Commission's ongoing review of its functions, methods and results. It is very important to place this issue in the context of the long history of the Sub-Commission by mentioning the study by Mr. Ribot Hatano (E/CN.4/Sub.2/1999/2), the report of the sessional working group on methods of work of the Sub-Commission, of which the chair-rapporteur was Mr. Marc Bossuyt (E/CN.4/Sub.2/1999/22), and the notes by the Chairman of the Sub-Commission (E/CN.4/Sub.2/1998/38 and E/CN.4/Sub.2/1999/47), which led to the above-cited decision 1999/114. Older but still relevant studies include the work of the working group established pursuant to decision 1989/104, whose chair-rapporteurs included Mr. Theo van Boven (E/CN.4/Sub.2/1991/16) and Ms. Haifa Warzazi (E/CN.4/Sub.2/1994/3). At the same time, the deliberations cannot ignore the broader context of United Nations reform in the field of human rights, including the proposals for a radical reform of the Commission on Human Rights.

6. Notwithstanding all the above, the more modest aim of this working paper is to provide a framework to facilitate an in-depth debate among members of the Sub-Commission in which observers at the session, including representatives of States and non-governmental organizations (NGOs), can participate. In preparing this overview, the author benefited from the very useful documentation provided by the Sub-Commission secretariat and from an extremely stimulating day of discussions organized in Geneva on 3 February 2005 by a group of NGOs, for which he

would like to thank the secretariat and the NGOs concerned. On 30 May 2005, the Office of the United Nations High Commissioner for Human Rights (OHCHR) sent all members of the Sub-Commission a letter containing various useful documents, including the provisional agenda (E/CN.4/Sub.2/2005/1), a note on the preparation of documentation for the fifty-seventh session of the Sub-Commission on the Promotion and Protection of Human Rights (based on the guidelines on documentation issued by United Nations Headquarters), and a compendium, prepared by the secretariat and dated 19 May 2005, of Commission on Human Rights decisions, entitled "Action taken by the Commission on Human Rights at its sixty-first session on the draft decisions recommended by the Sub-Commission on the Promotion and Protection of Human Rights for adoption by the Commission".

7. The author of this working paper considers it more important at this stage to focus on the guidelines annexed to Sub-Commission decision 1999/114 (E/CN.4/2000/2-E/CN.4/Sub.2/1999/54) following the Sub-Commission's most recent and far-reaching deliberations on its methods of work, to ask questions and to make suggestions with a view to stimulating joint discussion, rather than to seek definitive answers. Those deliberations were undertaken at the initiative of Ms. Iulia-Antoanella Motoc at the fifty-fifth session, and were resumed at the fifty-sixth session, when the decision was taken to request the preparation of this working paper. It will be for the Sub-Commission to decide whether a working group needs to be set up, as has twice been done in the recent past, given the uncertainty raised by the negotiations under way on the eve of the sixtieth anniversary of the United Nations.

I. GENERAL ORGANIZATION OF WORK

A. Programme of work of the Sub-Commission

8. Several preliminary questions need to be raised about the general organization of work. From a substantive point of view, the Sub-Commission's choice of priorities, and possible gaps in the subjects covered, need to be scrutinized. Some expert bodies, such as the International Law Commission, have a long-term programme of work that is periodically updated. It has to be said that the Sub-Commission has no such "steering mechanism" and that the agenda drawn up every year by the secretariat is no substitute for one. It is the individual memory of each member, particularly the most senior members, that provides the institutional memory of the Sub-Commission. The extremely general, and mostly negative, comments of the Commission on Human Rights give no overall sense of the basic direction the Sub-Commission's work should take; at best, the Commission welcomes, in its resolution 2005/53, "the attention given by the Sub-Commission to economic, social and cultural rights, as well as its continued attention to civil and political rights" (para. 5).

9. By default, the Sub-Commission chooses its topics in a piecemeal fashion, with no way of placing them systematically within some overall perspective. Although such flexibility can encourage individual initiatives and has some advantages, its drawbacks are plain to see, in that it rules out any medium-term vision. It might be useful to set up a working group within the Sub-Commission to draw up a general programme of work, though this should not hinder individual initiatives or prevent the Sub-Commission from adapting to the needs of the moment.

B. The Sub-Commission's timetable

10. Planning is all the more necessary given the heavy time constraints facing the Sub-Commission: firstly, because it meets in a single annual session of only three weeks, which severely disrupts the Sub-Commission's work as a group, leaving long breaks during which informal contacts between the experts are bound to be intermittent, and because the overloaded agenda gives members little respite from the most pressing tasks; and, secondly, because studies follow a completely different cycle measured in long periods of several years. For example, a new member could submit an initiative at the first session he or she attends and could be asked to prepare a working paper for the second session; if it is well received, he or she could be appointed special rapporteur with a three-year mandate beginning at the following session. This means that, at best, it would take the member five years to submit a final report to the Sub-Commission - and only then if he or she is re-elected for a new four-year mandate. However, everyone knows that the period of three years for the duration of studies, as provided for in guideline No. 3, can be altered if the circumstances so require:

> "1. Unless there are special circumstances connected with the nature of the subject under study, the period for carrying out a study should be three years from the time of its authorization. It should comprise, in addition to the preparatory document, the following three phases: a preliminary report, a progress report and a final report.
>
> 2. If at any time during his mandate the special rapporteur considers that, as a result of the difficulties encountered by him, he will need more than three years to complete his study, he should submit the question to the Sub-Commission for consideration in the context of the open debate on the agenda item in question."

11. The situation of rapporteurs who are no longer members of the Sub-Commission is taken into account by the Commission, which allows studies to be continued "notwithstanding the completion of currently existing mandates" (resolution 2005/53, para. 3 (a)). However, although this rule allows the Sub-Commission to continue to benefit from the individual expertise of its former members, it does not encourage the ongoing interaction that should characterize the Sub-Commission. If the work of the Sub-Commission is to be rationalized, a minimum of continuity is vital. One can only repeat that the reduction of the length of the session from four to three weeks is regrettable; it limits the time available for substantive discussions and is not conducive to collective efforts to successfully complete the work. It should also be stressed that automatically limiting Sub-Commission members to two four-year mandates contradicts the stated desire to make the Sub-Commission a "think tank", which implies its undertaking in-depth, long-term studies. These questions of methods of work and evaluation of results are not for the Sub-Commission to decide, but any adjustments contemplated by the Sub-Commission itself should not ignore the more general question of time management with a view to achieving continuity, consistency and effectiveness.

II. ORIGIN OF STUDIES

A. Initiatives from outside the Sub-Commission

12. Studies may originate outside the Sub-Commission, as pointed out in resolution 2005/53, which talks of "studies, research and expert advice at the request of the Commission, including proposals confirmed by the Commission which have been suggested by treaty bodies or other United Nations human rights bodies" (para. 3 (c)). The Commission seems to give priority to such studies when it recommends that the Sub-Commission further improve its methods of work by:

> "(a) Focusing on its primary role as an advisory body to the Commission, specifically when its advice is requested by the Commission;
>
> (b) Giving particular attention to the selection of studies specifically recommended by the Commission or proposals confirmed by the Commission which have been suggested by treaty bodies or other United Nations human rights bodies, at the same time focusing on how and when the implementation of existing standards can be improved" (para. 10).

13. It is not for the Sub-Commission, "as an advisory body to the Commission", to decide on the appropriateness of the requests for studies submitted to it by the Commission, but its task would be facilitated if the Commission tried to clarify the issues and overcome divisions by reaching a consensus on the questions presented to the Sub-Commission; otherwise, the Sub-Commission's work could be destined for deadlock. Also, the Commission's requests should take more account of the "generalist" nature of the Sub-Commission's expertise, unless, that is, it decides to diversify the criteria for election to the Sub-Commission so as to reflect the various specialities of international human rights law. It should also take into account the Sub-Commission's timetable when it calls for short-term deliberations, bearing in mind the dates of the sessions of the Commission on Human Rights or the General Assembly.

14. Lastly, the Commission should be consistent in its decisions. To take only the most recent example, the Commission, which had asked the Sub-Commission to conduct a study on "human rights and international solidarity" (a study on which Mr. Dos Santos had begun to work last year, and one that was on the agenda of the fifty-seventh session), has just adopted, by 37 votes to 15 with 1 abstention, a resolution of the same title, resolution 2005/55, with a view to appointing an independent expert. Clearly, in the case of sensitive subjects on which the Commission itself is deeply split, the Sub-Commission, thanks to its independence and representativeness, has the skills that are invaluable for bringing deliberations in the difficult search for consensus to a successful conclusion.

15. The Sub-Commission's role as an intermediary between the Commission on Human Rights and treaty-monitoring bodies submitting requests is a very important one if consistency is to be achieved in the work undertaken. In this respect, however, it is surprising that when the Sub-Commission undertakes a study at the request of the Committee on Economic, Social and Cultural Rights, the Commission amends decision 2005/105 regarding the

appointment of a special rapporteur to specify that the work is to be carried out in consultation with the Committee. This introduces a vicious circle: the Committee has to consult the Sub-Commission, which has to consult the Committee, and so on.

16. The main thing is to establish fruitful contacts with the treaty bodies, as illustrated by the close links with the Committee on the Elimination of Racial Discrimination, and consideration should be given to making the Sub-Commission's contribution to the drafting of the general comments of the treaty bodies more systematic. It might be useful to organize joint meetings with the various committees, depending on the calendar of meetings in Geneva, in order to improve consultation mechanisms and consider work programmes together.

17. Finally, the Commission could extend its circle of potential partners to other organizations in the United Nations system and to regional human rights organizations. This would be in the spirit of rule 5 of the 1999 guidelines ("Drawing up of the provisional agenda"), although this question would arise before any decision was taken on the organization of work and is a broader issue than the origin of topics studied by the Sub-Commission - and not every discussion leads to a study. Nevertheless, the rule makes it clear that, under the rules of procedure of the functional commissions of the Economic and Social Council, the Sub-Commission is an integral part of a larger system, not just a discussion partner for the Commission:

> "1. The Secretary-General, in consultation with the Chairman whenever possible, shall draw up the provisional agenda for each session.
>
> 2. The provisional agenda shall include all items required by these rules as well as items proposed by:
>
> (a) The Sub-Commission at the previous session;
>
> (b) The General Assembly;
>
> (c) The Economic and Social Council;
>
> (d) The Commission on Human Rights;
>
> (e) The Secretary-General.
>
> 2 *bis*. The provisional agenda may include, when the Secretary-General and the Chairman fully agree, such items as proposed by:
>
> (a) A working group of the Sub-Commission;
>
> (b) A member of the Sub-Commission;
>
> (c) A specialized agency, subject to rule 72;
>
> (d) A non-governmental organization, subject to paragraph 4 of this rule.

3. Items proposed for inclusion in the provisional agenda pursuant to paragraph 2 *bis* shall be submitted with basic documents in sufficient time to reach the Secretary-General not less than seven weeks before the opening of each session.

4. (a) Non-governmental organizations having general consultative status may propose items for the provisional agenda provided that:

(i) An organization that intends to propose such an item shall inform the Secretary-General of such intention at least nine weeks before the opening of the session, and before formally proposing item(s) shall give due consideration to any comments the Secretary-General may make;

(ii) The proposal shall be formally submitted with basic documents not less than seven weeks before the commencement of the session;

(b) An item proposed in accordance with the provisions of this paragraph shall be included in the agenda of the Sub-Commission if it is adopted by a two-thirds majority of the members present and voting."

B. Initiatives from within the Sub-Commission

18. Fortunately, the Sub-Commission still has plenty of leeway for taking initiatives, although it needs to make the most of it, while taking fully into account the 1999 guidelines. Internal initiatives currently come in two forms. First, there are individual initiatives, where an expert suggests a topic, mostly after a few informal conversations but sometimes with no prior consultation. In one case, an expert who had no co-sponsors submitted a draft resolution nominating himself to prepare a working paper. Mostly, however, a sense of collegiality requires another expert to formally submit a resolution seeking the appointment of a colleague. Conversely, it would be just as discourteous to oppose a colleague who wished to submit a working paper, even if the proposed topic did not seem very relevant or feasible. However, only very rarely is an initiative a real collective effort based on rational analysis, where an expert is requested by several colleagues, following consultations between the regional groups, to agree to prepare a working paper that he or she is qualified to prepare. The rare exceptions are requests from the Commission that have been left in abeyance. In other words, personal preferences generally prevail over thematic priorities.

19. It seems difficult to remedy this state of affairs, although some attempts have been made to do so in the past, because of the absence of any overview and the lack of time, as has already been noted. It is not easy to define objective selection criteria that would allow some transparency. One possibility would be to select topics in such a way as to reflect the balance between the various agenda items, but this would mean neglecting the search for new priorities and the further study of neglected topics. Moreover, any attempt to share out the work equally among the experts, by allocating a study to each member of the Sub-Commission, would not take

into account members' availability or area of expertise; the sole criterion would be a quantitative one. The only way to define a comprehensive policy that was both consistent and proactive would be to develop a clear vision of the top-priority studies, taking into account the specific requests addressed to the Sub-Commission, the expertise available and the overall balance of the studies undertaken.

III. SELECTION OF STUDIES

A. Priority-setting

20. The Sub-Commission is limited not only by qualitative constraints but also by quantitative ones. Under guideline No. 1 of the 1999 guidelines ("Regulation of the number of studies"), the number of studies is limited to 13 at any one time:

> "1. When the number of ongoing studies entrusted to special rapporteurs reaches 13, no new study may be undertaken unless a previously authorized study has been completed, except when it has been requested directly by the Commission.
>
> 2. Any study whose final report has been submitted to the Sub-Commission for consideration, even if it is subsequently decided that it may be updated annually, for example, in the form of a periodic report, is considered to have been completed.
>
> 3. When the number of studies proposed for a decision exceeds 13, the members of the Sub-Commission should hold consultations in order to establish priorities."

21. Of course, this guideline should be interpreted with some flexibility, as it applies only to special rapporteurs as such, but does not place limits on preparatory documents or even on updates. Nevertheless, under this rule only half of the members of the Sub-Commission can be assigned a mandate as special rapporteur, or only a quarter if alternates are taken into account (although guideline No. 4, paragraph 2, specifies that experts have priority in such assignments).

22. In order to define the Sub-Commission's priorities more clearly, it would be useful to conduct a proper collegial evaluation of working papers, with a clear vision of the results expected, the stages in the process and the means to be deployed. One possibility would be to return to the practice of making a distinction between the author of a working paper and the expert responsible for carrying out a study on the basis of that paper, or to introduce an element of discussion into what is too often a monologue by appointing a commentator. This would be in the spirit of guideline No. 5 ("Appointment of commentators"):

> "1. The author of a study may appoint a maximum of two members of the Sub-Commission as commentators to undertake an in-depth analysis of the study, in liaison with its author, so as to be better able to draw the attention of the Sub-Commission, during its deliberations, to points that seem important or controversial.
>
> 2. When such an appointment is envisaged, it is desirable that it should take place at the session preceding the submission of the study or not later than the beginning of the session at which the study is submitted.

> 3. Such an appointment should in no way limit the right of any member of the Sub-Commission to comment at any time under the agenda item being discussed, on the report submitted for consideration."

23. Similarly, the appointment of two experts to prepare a working paper or to undertake a study is an excellent idea. Past examples have shown the symbolic import of such an arrangement, with the Treat/Tchernichenko and Joinet/Türk studies, but it is clear that the choice should be made by the individuals concerned, to avoid giving the impression that there is a lack of trust or need for supervision. The practical constraints the arrangement places on the experts with regard to consultation and coordination also need to be taken into account. In that connection, special attention should be paid to the working papers to be presented at the fifty-seventh session of the Sub-Commission by Ms. Hampson and Mr. Salama, by Mr. Bíró and Ms. Motoc and by Mr. Alfredsson and Mr. Salama, as well as the study entrusted jointly to Mr. Yokota and Ms. Chung as special rapporteurs with the task of preparing a comprehensive study on discrimination based on work and descent (decision 2005/109). A fortiori, the establishment of informal working groups of five experts could be one way to bring together experts from very different backgrounds to work on a particular topic, as is currently being done in the case of the topic of extreme poverty. Without reopening the discussions that took place at the fifty-fifth session, such an arrangement might have been a way to make greater and quicker progress in the deliberations on the right to development, in the light of the Commission's concern at the delay in the Sub-Commission's work in this area (resolution 2005/4, particularly paragraphs 7 and 8).

24. Without holding up the work of the Sub-Commission, its officers, or an ad hoc group, could sift through the proposals for studies, bearing in mind the priority topics and the limits on the number of special rapporteurs. The key would be to reconcile the individual initiatives attesting to the vitality and diversity of the Sub-Commission with a genuine sense of collegiality, thereby producing a comprehensive vision of the work to be completed on a collective basis.

25. The 1999 guidelines also set out in very precise terms the steps to be taken prior to the launch of the actual study. Guideline No. 2 concerns the "Document preliminary to studies":

> "1. No new study may be undertaken unless a document entitled 'preparatory document' has been submitted. Such a document should indicate, inter alia, the relevance of the study, including its timeliness, its object and the general outlines envisaged, as well as a draft timetable. It should take the form of a working paper a few pages in length, submitted if possible in the course of the session of the Sub-Commission during which the study is proposed.
>
> 2. The preparation of a preparatory document shall in no way prejudge the decision finally taken concerning the execution of the study or the person finally designated to carry it out."

26. Similarly, guideline No. 4 establishes a specific procedure for the appointment of special rapporteurs of the Sub-Commission:

> "1. The specialized knowledge of the various members of the Sub-Commission should be taken into account when appointing special rapporteurs, due regard being had for equitable geographical distribution. The members of the Sub-Commission should hold consultations during the session to coordinate the topics of new studies and the appointment of the experts who will be responsible for them. To this end, the Rapporteur of the Sub-Commission shall be entrusted with the task of collecting the proposals for studies that are made during the session and informing the Sub-Commission in due time, for the purpose of agreeing and deciding on them."

B. Conduct of studies

27. The 1999 guidelines draw attention to some simple formal rules for the conduct of Sub-Commission studies. Guideline No. 6 covers the establishment of a "List of studies":

> "In accordance with established practice and in compliance with paragraph 3 of Commission resolution 1982/23, the Sub-Commission shall annex to its annual report an updated list of completed or ongoing studies, with the relevant symbol numbers, containing the following information:
>
> (a) Title of the study;
>
> (b) Name of the author;
>
> (c) Legislative authority;
>
> (d) Timetable for the study;
>
> (e) Effective date of submission of the preliminary, interim (progress) or final report."

28. Guideline No. 7 covers "Follow-up of studies":

> "The secretariat shall inform the Sub-Commission, at each session, of the follow-up action on studies, in the form of a note indicating for each study the following points:
>
> (a) Title of the study, specifying, if necessary, whether or not the report is updated annually (periodic report);
>
> (b) Name of the author;
>
> (c) Reference to the decisions concerning the budgetary implications and an indication of the total amount; for each of these decisions, the total amount of the appropriations actually used after the completion of the appropriate phase of the study;

(d) Summary of the most recent recommendations made by the author of the study; follow-up given to these recommendations, in respect of rules, measures or practices adopted by the secretariat, by Governments, by the specialized agencies or by the institutions or non-governmental organizations concerned."

29. However, the main difficulties arise in the organization of individual studies, when the experts are under severe practical constraints. For example, the guideline on the "Time limit for the submission of documents" reads as follows:

"1. Special rapporteurs and other members entrusted with the task of preparing studies, working papers and any other documents for submission to the Sub-Commission shall submit them to the secretariat at the latest 10 weeks prior to the session.

2. Studies, working papers and any other documents not submitted by the above time limit may not be considered at the next session, unless the Sub-Commission decides otherwise."

30. This rule is an even greater constraint in that the current timetable of the Commission requires it to confirm, or not, the Sub-Commission's proposals at the end of April, when in practice the documents are needed by the end of May. The note sent to all members of the Sub-Commission this year (see paragraph 6 above) undoubtedly represents some progress over the earlier situation, but it is dated 30 May - and refers to a deadline of 16 May. Not only does the secretariat not have time to officially notify the Sub-Commission's new special rapporteurs of their appointment by the Commission, it also makes the same mistake year after year of failing to provide information on assistance for experts, even though this is provided for and the budgetary implications are announced after each vote. The secretariat's hard work cannot make up for this inbuilt shortcoming in its cooperation with special rapporteurs, which does not make it any easier to undertake missions, even though these have been planned, or to send out questionnaires, even though the Commission has expressly authorized them. In the long-term, this lack of assistance also makes it impossible to systematically hold ongoing and timely consultations with NGOs or outside experts on the drafts of studies.

31. Strengthened technical support for special rapporteurs should be a priority, and the officially agreed resources should be actually made available as soon as possible to the experts, in accordance with paragraph (c) of guideline No. 7, on "Follow-up of studies". In this respect, an official letter should be sent by the secretariat to new special rapporteurs as soon as their appointment has been confirmed by the Commission. The consultations that special rapporteurs have to undertake could be greatly facilitated by making better use of the OHCHR web site, setting aside space for the studies under way in the Sub-Commission, with a web page accessible internally, to facilitate direct exchanges between experts, and one accessible to outsiders - accredited observers, States and NGOs, or even a broader audience. The idea would be to encourage the greatest possible transparency in working methods and the broadest possible dissemination of information, to the extent considered desirable by those concerned and bearing in mind editing and translation constraints. The official information provided this year to members of the Sub-Commission on the establishment of an extranet portal was excellent news. However, some thought should be given to providing technical assistance to experts who do not yet have easy access to information technology networks.

IV. ORGANIZATION OF STUDIES

32. Every expert, depending on his or her background and objective, undertakes the study entrusted to them as they see fit and their complete independence as special rapporteur is undisputed. Nevertheless, some methodological ground rules could facilitate the work of preparing the study and, above all, the Sub-Commission's discussions on it.

A. Structure of the study

33. At present, the preparation of studies is governed by external, purely formal rules, which hinder rather than help the expert in his or her work. This is particularly true of the formal limit of 10,700 words - which is apparently applicable in every language - for studies. This limit is a great constraint not only on substantive studies based on studies of comparative law but also on important "standard-setting" ones, which establish principles that require a minimum amount of referencing and commentary. The rules on the use of annexes and addenda should be clarified, as should those on the issuance of revised documents, to allow account to be taken of the discussions in the Sub-Commission when the study is finalized at the end of a session.

34. The structure imposed on United Nations documents, requiring the inclusion of a summary, table of contents and endnotes rather than footnotes, is far easier to accept than quantitative limits, even though the Commission repeats incessantly in public that the preparation of studies is the primary task, not to say the only useful role, of the Sub-Commission. One ambiguity that needs to be cleared up concerns the nature of the three types of document: the preliminary report, the progress report and the final report. Are these three complementary documents, that is, three parts of a single whole, or are they successive documents, the last of which replaces the earlier preparatory studies? The quantitative limits make it difficult, if not impossible, to complete a work of synthesis, which can pose practical problems for the publication of the study, unless some way can be found to consolidate the findings more systematically, with no formal constraints. In some cases, a revision can be an effective way to update and clarify a study if it can be presented as the final version superseding earlier versions, which are considered of purely "historical" interest.

35. Once again, however, it seems difficult to go further than a clarification of the formal framework governing the length, structure and duration of studies, if only because of the diversity of subjects tackled. Any standardization of the work of the Sub-Commission at this stage would be simplistic and counterproductive.

B. The collective dimension of studies

36. It is undoubtedly at this stage that it would be most useful to clarify the issues at stake. It has to be said that the time reserved for the discussion of studies in public meetings is very limited in relation to the scope of the questions dealt with. Given that the entire agenda of the Sub-Commission has to be covered in sessions that are only three weeks long, that is, in 15 working days, a more systematic approach to the advance submission of studies is needed. For example, questionnaires could be sent out to the national institutions that will be working with the Sub-Commission. More generally, transparent and open prior consultations on drafts could be envisaged, if the secretariat was able to provide continuous assistance and technological support (see paragraph 31 above).

37. Similarly, a more methodical organization during the session of the "interactive dialogue" so prized by the Commission could be envisaged; public meetings could be supplemented not only by parallel events, as at present, but also by meetings of informal working groups that are open to NGOs and representatives of interested States, or seminars of which the proceedings would be issued as working documents. The practical work involved in organizing and following up such events would obviously be beyond the means of a special rapporteur, and would again require the secretariat to assume its responsibilities.

V. SCOPE OF STUDIES

A. Formal follow-up

38. The last stage is follow-up. There is no need to linger here on the formal follow-up to studies in the form of resolutions and decisions of the Sub-Commission and its parent bodies. One can but reiterate the drawbacks, in terms of speed and efficiency, inherent in the current decision-making chain linking the Sub-Commission to the Commission and then to the Economic and Social Council. It is to be hoped that the overhaul of the system as a whole will simplify this situation.

39. When a study originates in a request from another United Nations body, an official communication should be sent when formal contact is made with the Sub-Commission or its special rapporteur. In addition, the Sub-Commission's full contribution could be highlighted more systematically when an important study carried out by a special rapporteur forms the basis for a general comment.

B. Substantive scope

40. Whatever their eventual fate may be, completed studies have a "life of their own". It could be interesting to produce a historical review of all Sub-Commission studies from the very beginning, or to publish a summary of its work, as suggested so enthusiastically by Paulo Sérgio Pinheiro when he chaired the Sub-Commission. A comprehensive review of this sort carried out by its members and former members, following the example of the International Law Commission, would be a great credit to the Sub-Commission. The sixtieth anniversary of the United Nations could be a good opportunity to take an official initiative like this, as a collective tribute to all the former members of the Sub-Commission who contributed to its collective impact. The Sub-Commission has performed invaluable services in the cause of human rights in the past, and should show that it is ready to take this living legacy forward in the future.

41. In any case, it is just as important to support the publication of the consolidated and definitive works of the Sub-Commission, not only as official United Nations documents but also as a series of publications for mass distribution in cases where the topics are suitable for this purpose, as they often are. The Sub-Commission's work would then achieve the higher profile it needs.

42. Developments in new technology will help overcome many of the obstacles encountered in the past in the form of publishing and distribution costs. The official OHCHR web site, which is organized by session and by document type and symbol, could be improved to make it easier for the uninitiated user to access different topics. To give just one example: can anyone find the Sub-Commission's commentary on the principles on the responsibility of transnational corporations in the field of human rights, a document that, like it or not, crops up time after time in discussions in the press and among the general public? Moreover, the posting online of meeting records is incomplete, haphazard and late, and bears no relationship to any logic or priority; the work done by working groups is not presented systematically and is mostly not even up to date, even in the case of a group as important as the Working Group on Contemporary Forms of Slavery; and the online information on studies that are under way and on the activities of working groups could be improved by including hyperlinks.
